IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 580 OF 2006

1. Jayu Babu Velip,
   major of age,
   widow of Babu Velip,

2. Shri Mohan Babu Velip,
   major in age,
   son of Babu Velip,

3. Shri Rajendra Babu Velip,
   major in age,
   son of Babu Velip,

4. Shri Nilkant Babu Velip,
   major in age,
   son of Babu Velip,

5. Shri Prakash Babu Velip,
   major in age,
   son of Babu Velip,

   All residents of Karagali,
   Kola, Canacona.

6. Smt. Salu Krishna Velip,
   d/o Babu Velip,

7. Krishna Ganesh Velip,
   son of Ganesh Velip,

   Both residents of Musel,
   Agonda, Canacona,
   (Registered Address) .... Petitioners

versus

1. Shri Barnabe Antono Florian
   Monte Vaz, Angustio Fernandes,
   major in age,
   son of late Juze Luis Fernandes,

2. Smt. Meera Fernandes,
   major of age,
   wife of Bernabe Fernandes,

3. Shri Santosh Britto Xavier
Angusties Fernandes,
major in age,
son of late Juze Luis Fernandes,

4. Smt. Janaki Shanta Velip
major in age, daughter of Nagu
Vithoba Velip, landlady, married,
and her husband,

5. Shri Shanta Vitoba Velip
major in age, s/o Vithoba Velip,
Both r/o Paricoto, Matvem, Mola,
Khola, Canacona, Goa.
Both represented herein through
their constituted Attorney Shri
Mohan Baby Velip, the defendant no.2

(Respondents no.1, 2 and 3 are
residents of House no.55,
Sirvoi, Quepem, Goa.
(Registered Address) .... Respondents.

Mr. J.E. Coelho Pereira, Sr.Advocate for the petitioners.

Mr. C.A. Coutinho, Advocate for the respondents.

Coram:- J.N. PATEL, J.

Date:- 8th December, 2006.

ORAL JUDGMENT:

Rule returnable forthwith.

2. Heard.

3. The petition can be disposed of at the stage of admission itself.

4. The petitioners are the original defendants who have filed

a counter claim in the case before the Trial Court, and after the plaintiffs' evidence was over filed an application for amendment.

5. The Trial Court by the impugned order rejected the application for amendment on the ground that the defendants have come up with a different stand at a belated stage claiming to be in possession of the suit property which is not permissible, and on the earlier occasion the application for amendment was allowed and that the defendants have not taken pains to amend the counter claim and considering the fact that the case is at the fag end of trial, the application came to be dismissed.

6. The learned Counsel for the petitioners/original defendants submits that the application for amendment is made to settle all the issues between the parties and it does not in any manner prejudiced the respondents/plaintiffs and therefore it ought to be allowed.

7. The learned Counsel for the respondents/plaintiffs submits that the Trial Court was justified in rejecting the application as the defendants are merely delaying the trial, which is almost at the verge of conclusion and on the facts that they have taken an altogether different steps and the facts pleaded in the counter claim where they were not sure as to whether they are in possession of the premises, and therefore the petition deserves to the dismissed.

8. On examining the nature of the pleadings sought to be adduced, this Court finds that though it is belated, the Trial Court ought to have allowed the same as it would avoid multiplicity of proceedings and will enable the Trial Court to dispose of the suit by considering the claim and counter claim made by the parties so as to put an end to the issues in the litigation between the parties. It is true that the defendants have approached the Court at the stage when the evidence was being recorded and for that, the respondents/plaintiffs can be very well compensated.

9. This Court quash and set aside the impugned order and allow the application filed by the petitioner for amendment on the condition that the defendants shall deposit a sum of Rs.2,500/- as costs for allowing their application for amendment in the Trial Court within two weeks and carry out amendment forthwith.

10. On such amendment being carried out, it will be open for the parties to recall the witnesses if so required for the purpose of tendering evidence in view of the amendment carried out by the petitioner.

11. Rule is made absolute in aforesaid terms.

J. N. PATEL, J.

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